

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

JASON DAVID BROWN,
LASZLO BOZSO and
MERIS DUDZIC,
Individually and on behalf of
all others similarly situated

Plaintiffs,

vs.

LOWE'S COMPANIES, INC., and
FIRST ADVANTAGE
BACKGROUND SERVICES CORP.
f/k/a LEXISNEXIS SCREENING
SOLUTIONS, INC.

Defendants.

CASE NO. 5:13-cv-00079

**DEFENDANT FIRST ADVANTAGE BACKGROUND SERVICES CORP.'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendant First Advantage Background Services Corp., f/k/a LexisNexis Screening Solutions, Inc. ("First Advantage"), pursuant to Rule 56 of the Federal Rules of Civil Procedure, respectfully moves the Court to grant it partial summary judgment on Count 3 of Plaintiffs' Third Amended Complaint, which alleges that First Advantage violated 15 U.S.C. § 1681k by failing to send procedural notices to the Plaintiffs the same day it reported the public record information it gathered on them to Lowe's. This claim must be dismissed as to both Plaintiffs because the uncontroverted evidence shows that First Advantage in fact sent notices to each of them on the *same day* it reported the results of its background checks to Lowe's. Plaintiffs' Count 3 is also subject to

summary judgment because it alleges a “willful” violation of § 1681k, but Plaintiffs cannot meet the relevant requirements of *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57 (2007), to maintain such a claim. Count 3 is further subject to summary judgment because it fails the Article III test enunciated by the United States Supreme Court in *Spokeo, Inc. v. Robins*, 578 U.S. ___, 136 S. Ct. 1540 (2016). For any or all of these same reasons, Plaintiffs cannot be members of the putative class they seek to represent, and therefore the decapitated class claim in Count 3 also must be dismissed.

In support of this Motion, First Advantage relies on: (a) its Memorandum of Law in Support of its Motion for Partial Summary Judgment and all exhibits thereto; (b) Statement of Material Facts to Which there is no Genuine Dispute; (c) Declaration of Matthew Brian O’Connor in Support of First Advantage’s Motion for Partial Summary Judgment and all exhibits thereto; (d) Declaration of Kevin Sampler and all exhibits thereto; and (e) all other matters of record on file with the Court.

WHEREFORE, First Advantage respectfully requests that the Court grants its Motion for Partial Summary Judgment and dismiss Count 3 of the Third Amended Complaint with prejudice.

Respectfully submitted this 20th day of January, 2017.

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Certificate of Service

I hereby certify that on January 20, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such to the following counsel of record:

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